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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,101	10/09/2003	Daniel F. Justin	ZIM0403	9213
7590 12/11/2008				
John F. Hoffman, Esq. BAKER & DANIELS LLP Suite 800 111 East Wayne Street Fort Wayne, IN 46802			EXAMINER CUMBERLEDGE, JERRY L	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 12/11/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/682,101

**Applicant(s)**

JUSTIN ET AL.

**Examiner**

JERRY CUMBERLEDGE

**Art Unit**

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 December 2007.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10, 12-24 and 30-36 is/are pending in the application.  
4a) Of the above claim(s) 1-10 and 34-36 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 12-24 and 30-32 is/are rejected.  
7) ☒ Claim(s) 33 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 09/11/2007 11/13/2008  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Lichtman (US Pat. 5,308,357).

Lichtman discloses an instrument (Fig. 7) for gripping a tibial tray component of a modular keel and tray assembly, the tray component having a top and a bottom, the tray component being configured for assembly to the keel component, the instrument comprising: a handle (Fig. 7, near ref. 70); and an attachment mechanism (Fig. 7, near ref. 14A) for connecting the instrument to the tray such that the handle extends outwardly from the tray component to provide a grip for manipulating the tray component, the attachment mechanism having a plurality of cantilevered springs (Fig. 7, near ref. 50A,50B), wherein the plurality of cantilevered springs apply a biasing force against the tray component to connect the instrument to the tray component (Fig. 7). The attachment mechanism connects the instrument to the keel component in a reproducible known orientation such that the orientation of the handle indicates the orientation of the keel component even when the keel component is not itself visible (Fig. 7). The attachment mechanism further comprises: a first jaw (Fig. 7, ref. 14A) attached to the handle; and a second jaw (Fig. 7, ref. 14B) attached to the handle, the

jaws being movable relative to one another to clamp the keel component (Fig. 7). The attachment mechanism further comprises an actuator and a link (Fig. 7, near ref. 76). The device comprises a cover (Fig. 7, ref. 18). The attachment mechanism further comprises adapters (Fig. 17, gripping portion with ridges) connectable to the handle and the tibial tray as an intermediate member between the handle and the tibial tray component. The attachment mechanism further includes a dovetail mating surface (Fig. 17).

Claims 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Robie et al. (US Pat. 6,159,217).

Robie et al. disclose a tibial keel holder and tibial tray holder combination comprising a tibial keel holder including a first handle (Fig. 12, ref. 100, bottom half), an attachment mechanism for connecting the tibial keel holder to the tibial keel component in a reproducible known orientation (Fig. 12, teeth), and a cover (Fig. 12, ref. 500), the cover, with the keel component connected to the tibial keel holder, selectively positionable over a portion of the keel component to shield the portion of the keel component from contamination (Fig. 12); and a tibial tray holder (Fig. 12, ref. 100, top half) including a second handle (Fig. 12) and an attachment mechanism for connecting the tibial tray holder to the tibial tray component in a reproducible known orientation, the first and second handles forming a predetermined angle between them (Fig. 12). The combination further comprises an assembly tool (column 6, lines 1-36).

***Response to Arguments***

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

***Allowable Subject Matter***

Claim 33 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JERRY CUMBERLEDGE whose telephone number is (571)272-2289. The examiner can normally be reached on Monday - Friday, 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. C./  
Examiner, Art Unit 3733  
/Eduardo C. Robert/  
Supervisory Patent Examiner, Art Unit 3733

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